

Your guide to Schedule 1 of the Children Act 1989

Overview

Schedule 1 to the Children Act 1989 enables the court to make financial provision for the benefit of a child. This guide will provide you with an overview of the financial orders the court can make and explain the stages of the court process.

Orders

The court can make a variety of financial orders including:

- Periodical payments order;
- Secured periodical payments order;
- Lump sum order (to include a lump sum to be paid in instalments);
- Settlement of property order;
- Transfer of property order.

Who may apply?

Those entitled to apply are set out in paragraph 1 (1) of Schedule 1 and are:

- A parent of a child;
- A guardian or special guardian of a child;
- An adult child;
- Any person named in a child arrangements order as a person with whom the child is to live.

Who is a parent?

“Parent” is defined as being the biological parent or other persons who are parents by operation of the law. “Parent” for the purposes of the Act includes any party to any marriage or civil partnership, whether or not subsisting, in relation to whom the child concerned is a child of the family. This will therefore include step-parents.

A “child of the family” in relation to the parties to a marriage or civil partnership is defined in section. 105(1) of the Children Act 1989 as either a child of both of them or any other child (other than a foster child) who has been treated by both of them as a child of their family. The child must live with the applicant.

Who is a child?

A “child” is defined for the purpose of the Children Act 1989 as a person under 18.

However, subject to the Child Support Act 1991, an adult child, whose parents are not living together in the same household and in respect of whom there was no periodical payments order enforced before they reached 16, is able to apply for periodical payments or a lump sum if either they are in full time education or training, or where there are special circumstances such as a disability.

For the benefit of the child

The claim by the applicant can only relate to the needs of the child and any order made must be to the child directly or to the applicant for the benefit of the child.

What is a periodical payments order?

A periodical payments order requires the non-resident parent to make regular monthly payments to the parent with care to meet the child's day-to-day living expenses. This is to meet recurring items of expenditure for the child that are usually paid from income and can also sometimes include a carer's allowance that is payable to the person with care to account for the primary carer's financial needs.

The court's power to make periodical payment orders are limited by the Child Support Act 1991. The court has jurisdiction to make the following orders for periodical payments permitted by the Child Support Act of 1991:

- The Child Maintenance Service (CMS) does not have jurisdiction (for example, where the paying parent is abroad);
- The parties agree a periodical payments order (although this can only exclude the jurisdiction of the CMS for 12 months);
- Educational expenses, including school fees and expenses directly related to education and training for a vocation, trade or profession;
- Costs attributable to a disability;
- Top up orders. These can be made provided that a maintenance calculation has been made by the CMS, the non-resident parent's income exceeds £156,000 gross per annum and the court is satisfied that in the circumstances of the case it is appropriate.

What is a lump sum order?

A lump sum order requires the non-resident parent to pay a lump sum to the parent with care to meet one-off items of capital expenditure for the child's benefit. For example, this could include a computer or other equipment needed to help with education, or a car for the child's benefit which is provided to the parent with care, or the purchase of furniture or other goods for the home where the child is, or will be, living. The court will consider the lump sum required by reference to the child's individual needs and circumstances and all of the factors listed below.

What is a settlement of property order?

A settlement of property order requires the non-resident parent to provide funds to purchase a property that will be owned by trustees, or to transfer ownership of a property that they own to trustees, for the benefit of the child.

In this context, property will be a home where the child is, or will be, living with the parent with care. Ownership of the property reverts to the non-resident parent from the trustees when the child attains the age of 18 or completes full-time tertiary education.

A settlement of property order will only be made if the non-resident parent has the means to invest in property and meet the tax consequences of creating a settlement throughout the period of the child's dependency. Only one settlement of property order can be made against the non-resident parent for the same child, although it is possible for the settlement to provide for an alternative replacement property.

What is a transfer of property order?

A transfer of property order requires the non-resident parent to transfer a property that they own to the parent with care or to the child. The property will be a home where the child is, or will be, living with the parent with care. The property reverts to the non-resident parent when the child attains the age of 18 or completes full-time tertiary education.

The factors the court must consider

When considering whether to make an order, the court shall have regard to all the circumstances, including

the factors set out at paragraph 4 of Schedule 1 which are as follows:

- The income, earning capacity, property and other financial resources which each person has or is likely to have in the foreseeable future;
- The financial needs, obligations and responsibilities which each person has or is likely to have in the foreseeable future;
- The financial needs of the child;
- The income, earning capacity (if any), property and other financial resources of the child;
- Any physical or mental disability of the child;
- The manner in which the child was being, or was expected to be, educated or trained.

How to apply and the court process

- Applicants are required to attend a mediation information and assessment meeting (MIAM) before making the application, subject to exemptions, such as where there is domestic violence;
- The application is made on Form A or A1 (depending on the orders sought);
- The court process is as follows:
 - a. The court will fix a first hearing date once they have issued the application;
 - b. Either the court will serve a copy of the application, the notice of hearing and a blank financial statement (Form E1) on the respondent or, if the applicant requests it, the applicant can serve these documents;
 - c. The parties must file and serve financial disclosure in Form E1;
 - d. Unless the court is able to determine the application at the first hearing, the court may direct that further evidence/disclosure be filed and will set a date for a directions hearing or final hearing;
 - e. There is a short form procedure for applications which relate purely to periodical payments. In practice, however the short form procedure may not be suitable depending on the circumstances.

Duration of Schedule 1 orders

Orders for periodical payments or secured periodical payments can start from the date of the application but should not extend beyond the child's 17th birthday in the first instance, and not beyond the child's 18th birthday, save where the child is undergoing training for a trade, profession or vocation, or where there are other special circumstances such as a disability.

An order for periodical payments ceases on the death of the person making the payments.

Unless there are special or exceptional circumstances, case law confirms that a settlement of property or a transfer of property order should end on a child attaining the age of 18 or completing full time tertiary education. There should also be provision for a gap year either before or after the completion of the first degree course.

Funding for legal costs

There is no specific provision in Schedule 1 for interim provision for legal costs for the applicant. However, case law has developed to confirm that legal costs can be paid by the respondent by way of interim periodical payments orders if the court has jurisdiction to make such a periodical payments order. The provision for a legal costs allowance may also be made by way of a lump sum.

These orders are at the discretion of the court and the applicant must show that they cannot reasonably obtain legal advice by some other means and in particular that:

- They cannot deploy their assets directly or raise a loan to fund legal services;
- They cannot obtain legal services funding by the offer or a charge on ultimate capital recovery; and
- Legal aid is not available.

If the above criteria are met, the court may go on to consider the reasonableness of the applicant's stance in

the proceedings and the merits of their claim, this will include an assessment of what the applicant is likely to recover in a final award.

Jurisdiction

This is founded on the habitual residence of the child in England and Wales.

When the child lives outside England and Wales, the court may make a periodical payments order or secured periodical payments order where the court has jurisdiction pursuant to Council Regulation (EC) No 4/2009. Applications can also be made for lump sum and property adjustment orders if the payer is resident in England and Wales even if the child is not.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.